IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.R.P.(NPD).No.730 of 2004
and
C.M.P.No.5868 of 2004

1.Venkataraman @ Murali @ Raja

2.Girija

3.Chandra ... Petitioners/Respondents

Vs.

1.R.Venugopal

2.R.Ganesan @ Vinayagam ... Respondents/Petitioners

Prayer: Petition filed under Section 115 of the Code of Civil Procedure, against the Judgment and Decretal order of the learned Principal District Munsif, Pondicherry, dated 24.2.2004 made in E.P.No.90 of 2002.

For Petitioners : Mr.R.Subramanian

For Respondents : M/s.Hema Sampath SC
For R.Subramanian

ORDER

The Civil Revision Petitioners herein are the respondents in Execution Petition No.90 of 2002 on the file of the learned Principal District Munsif, Pondicherry.

2.Before the lower Court, the respondents/petitioners in the Execution Petition No.90 of 2002 have prayed for the relief:

(i) to grant leave to them to execute the French Grosse Copy of the Usufructuary Gift Deed dated 25/04/34 as a Deemed Decree;

(ii) to grant leave to execute the Deemed Decree (S.146 C.P.C.);

(iii) to deliver to the civil revision petitioners/respondents vacant and actual possession of the E.P. Schedule Mentioned Property by ejecting the respondents, bound by the decree, and if necessary by removing the

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person/persons bound by the said decree and further if necessary by breaking open the locks, if any, put up by the Respondents/Obstructors or person/persons, bound by the said decree, in accordance with Order XXI R.35(1) & (3) of the C.P.C.

3.In the counter filed to the E.P.No.90 of 2002, filed by the first respondent and adopted by other respondents, it is inter-alia averred that the E.P. is not maintainable either in law or on facts and that the respondents are the grand son and daughters of the original owner of the execution petition schedule mentioned property and that they have entered into a lease with an agreement holder, who had entered into an agreement with the actual owner of schedule mentioned property viz., grand mother of the respondents and hence, the civil revision petitioners/respondents have no right at all to file the Execution Petition.

4.It is also the plea of the respondents that without obtaining any decree from any Court of law no Execution Petition can be filed and hence, the E.P. has to be dismissed in limini. As a matter of fact, the respondents contend that the French Civil Court was revoked by the Government of Pondicherry and hence, the revision petitioners/respondents have no manner of right to file the present execution petition.

5.The learned District Munsif, Pondicherry has passed orders in E.P.No.90 of 2002 on 24.02.2004 inter-alia allowing the Execution Petition on condition that the civil revision petitioners/respondents to produce the grosse (original) within 3 days and further observed that only then, the delivery would be effected etc.

6.According to the learned counsel for the civil revision petitioners/respondents, the order of the lower Court is not valid in law because of the fact that the execution petition was entertained under Civil Procedure Code and under French Civil Court, when Civil Procedure Code, 1908 and the Transfer of Property Act were extended to Pondicherry even in 1968 and that the lower Court also committed an error that the respondents acquired the right within the meaning of Sub-Section 2 of Section 4 of the Pondicherry Extension of Laws Act, 1963.

7.The further case of the civil revision petitioners/respondents is that the lower Court has overlooked the fact that the right to execute a Will arise only on the death of the last life estate holder-Radhabai Ammal viz., 29.07.2002 and that the Trial Court has failed to see that the mandatory requirement as per law to produce the original document was not complied with.

8.The learned counsel for the respondents/petitioners before the Trial Court contends that the Execution Petition No.90 of 2002 were filed by the respondents/petitioners in regard to the delivery of possession of the E.P. schedule mentioned property to the placing reliance on the basis of a usufractuary gift deed dated 25.04.1934 perpetuated to have been executed by the father of the respondents/petitioners and that the said

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Gift Deed was executed before a Notary, and the said document under French Law was a Deemed Decree and therefore, the respondents/petitioners are legally empowered to execute the said decree and to obtain delivery of possession of the property from the petitioners /respondents. The learned counsel for the respondents /petitioners pointed out before this Court that the usufractuary gift deed dated 25.04.1934 was executed in favour of one Radhabai Ammal, who was the aunt of the respondents/petitioners, who had the life interest to enjoy the said property along with the life time of Balasubbammal.

9.The learned counsel for the revision petitioners submits that under the erstwhile French Law, French Legal System enabled a person to execute a document without going through the process of regular suit and that on 15.09.1992 there was partition Gopal Chettiar and two brothers and that on 21.12.1930 the present property was purchased by Ramakrishna and that on 25.04.1934 Ramakrishna Chettiar executed a gift deed giving life estate to Balasubbammal and his sister Radhabai Ammal and on 24.09.1965 Ramakrishna expired and legal representatives namely, R.Venugopal and R.Ganesan @ Vinayagam of Ramakrishna Chettiar filed a suit in O.S.No.8 of 1998 on the file of the First Additional District Munsif, Pondicherry, praying for the relief of permanent injunction against the defendant, as servants, agents etc. from demolishing or altering the superstructure or digging the earth or constructing any type of structure in the schedule mentioned premises and for costs of the suit.

10.It is significant to point out that Radhabai Ammal, defendant in the suit in O.S.No.8 of 1998 has specifically admitted in her evidence as D.W.1 that she had the right of enjoyment and that she could enjoy the said house as she desires till her demise. It is the case of the revision petitioners that after the death of Radhabai Ammal, the LRs has come by way of present E.P.

11.The Pondicherry (Extension of Laws) Act, 1968 was enacted by Parliament on 24.05.1968 to extend certain Central Acts to the Union Territory of Pondicherry and by virtue of Section 4(1) Repeal and saving provision any law in force in Pondicherry or any area thereof corresponding to any Act referred to in Sub-section (1) of Section 3 or any part thereof (except in so far as such law continues to be applicable to Renoncants) shall stand repealed as from the coming into force of the said Act in Pondicherry and sub-section(2) of Section 4 enjoyed that; Nothing in sub-section (1) shall affect-

(a)the previous operation of any law so repealed or anything duly done or suffered thereunder; or

(b)any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or

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remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed:

Provided that anything done or any action taken (including any appointment or delegation made, notification, instruction or direction issued, form, bye-law or scheme framed, certificate obtained, permit or licence granted, or registration effected) under any such law, shall be deemed to have been done or taken under the corresponding provision of the Act extended to Pondicherry by this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under the said Act.

12.Section 3 of the Pondicherry (Extension of Laws) Act, 1968 provides extension with amendment of certain laws to Pondicherry and the different dates which may be appointed for different provisions of any Act and any reference in any such provision to the commencement of the Act shall be construed as a reference to the coming into force of that provision.

13.According to the learned counsel for the civil revision petitioners that to enable execution without going to Civil Court is a procedural Act and it is to be seen that whether Section 4(2) of the Pondicherry (Extension of Laws) Act, 1968 preserve such right inspite of extension of Civil Procedure Code to Pondicherry on 05.09.1968 and on 05.09.1968 what are the rights and liabilities accrued to the parties are to be seen and they never had any right when Balasubbammal and Radhabai Ammal were there and the Trial Court relied on the mortgage deed decision and there was no evidence to show when Balasubbammal expired and it has to be seen that whether any right accrued before 05.09.1968 and Section 4(2) of the Pondicherry (Extension of Laws) Act, 1968 was not the same and that the respondents/petitioners before the lower Court has to file a suit claiming their right in law.

14.The learned counsel for the revision petitioners/respondents placed reliance on the French Civil Code (English Translation Volume I by E.BLACKWOOD WRIGHT, LL.D., Trinity College, Dublin, and of the Middle Temple, Barrister-at-Law. Under the caption TITLE III OF USUFRUCT, OF THE RIGHT OF USER AND OCCUPATION. CHAPTER-I OF USUFRUCT which runs as follows:

> "578.Usufruct is the right of enjoying the use of things which are owned by another as fully as the owner himself, subject to the duty of keeping intact the subject-matter of such usufruct. (C.587 and following; 600, 1568, 2108, 2118)
>
> 579.Usufruct arises through operation of law, or by an act inter parties. (C.384, 754, 899, 917, 949, 1401, 1403, 1422, 1530, 1549).
>
> 580.A usufruct may be created either simpliciter without limitation, or up to a certain day, or subject to conditions. (C.1168).
>
> 581.A usufruct may be created in respect of any kind of property, movables or immovables. (C.587, 588)."

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15.He also placed reliance to Section 3 of the manner in which usufruct terminates and pressed into service. 617 which deals with the extinguishment of usufruct by the actual or civil death of the usufructuary, by effluxion of time for which it was granted, etc.

16.The learned counsel for the civil revision petitioners/respondents cited AIR 1997 Madras 178 (Shanmugam V. Perumal Naicker and others) wherein it is observed as follows:

> "Civil P.C. (5 of 1908), Section 4(2) - Execution of decree in Franch Colony, Pondicherry, obtained before commencement of C.P.C. in the Colony - Law applicable - Code coming into force between publication was ordered and gazetter publication was made - Steps under French Law thereafter are not valid - After coming into force of Civil P.C., auction purchaser not depositing amounts as per provisions of Order 21, Rules 84 and 85 - It follows there was no sale at all - Civil revision filed against order for sale and then withdrawn - Principles of res judicata or constructive res judicata do not apply - Subsequent suit will not be barred - Auction sale being void, 'mortgager continues to be owner - There being no title in law, no title by adverse possession can be claimed."

17.The revision petitioners counsel relied on AIR 1976 Madras 32 (Adaikappa Chettiar V. A.Natchiar) wherein it is observed as follows:

> "(B) Pondicherry (Extension of Laws) Act (1969) Section 4 - Mortgage executed before Notaire executable under the French Law without recourse to suit - Indian enactments extended to Pondicherry by the Pondicherry (Extension of Laws) Act 1968 Section 4(1), (2) - Subsequent suit on the mortgage in Indian Court - Maintainability. (Civil P.C. (1908) section 9 - Mortgage under French law in Pondicherry - Jurisdiction).
>
> Under French Law a grosse copy of a notarial mortgage could be executed as if it were a decree without a suit on the mortgage. This right is a substantive and not a procedural one and could even after the merger of Pondicherry in India, it could be exercised in the Indian Court praying for sale of the hypotheca straightway. AIR 1973 Cal. 295, Rel. on.
>
> But the existence of such a remedy does not bar a Civil Suit on the mortgage in the Indian Court after the merger. What sec. 4 does is not to shut out the erstwhile French Citizen from having resort to the Indian Civil Court, but to protect and preserve whatever rights and privileges he might have had under the French law, which has been repealed. When a person, who enjoyed such a privilege, filed a suit in the ordinary Civil Court on foot of a notarial mortgage deed, it is the plain duty of the Court to entertain it under Section 9 of the Indian Civil Procedure Code."

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18.In the aforesaid decision at page 33 in paragraph 6 it is held as follows:

"Under the French law, a grosse copy of a notarial mortgage deed could be executed as if it were a decree granted by a court of law. There was no need under the French system for the mortgagee to file a suit pay court fee on the plaint, obtain a preliminary decree and then a final decree and then put that final decree in execution against the hypotheca. The notarial mortgage deed could be entrusted straightway to a 'huissier' and executed in accordance with the French procedure, the details of which I need not go into now. The question arises whether after the French Procedure Code was repealed by the Indian Civil Procedure Code, a person in the situation of the plaintiff, holding a grosse copy of a notarial mortgage deed is disentitled under the Indian law to file a plaint on foot of the deed paying court fee thereon and obtain a decree in accordance with the Indian Civil Procedure; but should proceed to enforce the notarial bond straightway. In fact, learned counsel for the appellant went the length of saying that the Civil Court would have no jurisdiction to entertain the suit filed by the holder of a notarial mortgage deed on foot thereof. I am entirely unable to agree. The question whether the plaintiff was entitled to execute the notarial mortgage deed without obtaining a decree thereon is one which does not call for adjudication in this appeal, though it may not be irrelevant to refer to a Full Bench decision of the Calcutta High Court in Susama Bala V. Bibhuti Bhushan AIR 1973 Cal 295. There it has been held that a grosse copy of a notarial mortgage deed could be executed even after the Indian law has come into force without a decree being obtained. According to the Full Bench of the Calcutta High Court, the right obtained under the grosse copy of the notarial mortgage deed is a substantial right and not a procedural one and it must be preserved under the Indian law after the merger. According to the learned Judges, a person in the position of the plaintiff could execute Ex.A.1 as if it were a decree by filing an execution petition in the Indian court and praying for the sale of the hypotheca straightaway. Upon this question, I do not wish to pronounce any opinion. The distinction between substantive rights recognised by French law and mere procedural rules of French law will have to be drawn sagaciously with regard to the relevant circumstances of each case and the distinction cannot be exhaustively illustrated in vacuo. For instance, the requirement of French law that notice of the deposit of 'Cashierdes cahrges' shall be served on the debtor and all the creditors and othr persons mentioned in Article 692 of the Code de Procedure Civile is a matter of substance and ought to be complied with by the Indian courts acting within the frame work of the Indian Civil Procedure Code. But the requirement of the French law that the service of notice, shall be effected through huissiers is merely a procedural matter,

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which the Indian Courts can ignore. No litigant can be heard to say that service by process servers under the watchful supervision of the Indian courts is less efficacious than service by French huissiers. There may, however, be intermediate cases such as the imposition of time limits by French law with reference to service of notices. It is for the Judges to consider judicially whether such time limits affect the substance of the thing or are merely procedural in character. The 'substantive' may shade off imperceptible degrees into the 'procedural' and it is for the Court to draw the line between the two, remembering the purpose of the distinction. The right to execute a notarial mortgage deed straightway without filing a plaint, paying court fee, obtaining decree and exposing the claimant to the dilatory tactics of his opponent is, I fancy, a valuable right and a substantive right. But the question is whether the holder of a copy of a notarial mortgage deed is confined under the Indian law to the remedy which he had under the French law. What Section 4 (20 of the Pondicherry (Extension of Laws) Act, 1968, says is that nothing in sub-section (1) shall affect any right, privilege, obligation etc. acquired or accrued under the French law that has been repealed. There is nothing in this section which shuts out the person who has acquired such a right under the French law from the portals of the Indian Courts and from the remedy to which, under the Civil Procedure Code and under the Indo-Anglian system of jurisprudence he would undoubtedly be entitled to. A holder of a mortgage, although it has been granted under the French law and procedure, is certainly entitled under the Civil Procedure Code to file a suit in accordance with the procedure thereof. Section 9 of the C.P. Code says that the Court shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred. It is not contended by the learned counsel for the appellant that the suit filed by the plaintiff in the court below is not a suit of a civil nature. What he contends is that inasmuch as the plaintiff had an alternative remedy under the French law to proceed to enforce the notarial mortgage deed without resort to a court of law, it is not competent for him to file a suit on Ex.A.1 in the Indian Court and obtain a decree in accordance therewith. It is indeed an irony that this argument should come out of the mouth of the defendant who has fully exploited the opportunity given to him by the plaintiff. If the plaintiff had chosen to enforce her privilege under the French law by putting the notarial mortgage deed in execution straightway, the defendant would not have had the opportunity of dragging on the proceedings for nearly five years and raising the defences which under the French law he could not raise. What Sec.4 of the Pondicherry (Extension of Laws) Act, 1968 does is not to shut out the erstwhile French citizen from having resort to the Indian Civil Court, but to protect and preserve whatever

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rights and privileges he might have had under the French law, which has been repealed. When a person, who enjoyed such a privilege, filed a suit in the ordinary civil Court on foot of a notarial mortgage deed, it is the plain duty of the Court to entertain it under Section 9 of the Indian Civil Procedure Code. The argument that the court has no jurisdiction to entertain the suit or that the plaintiff has no remedy open to her under the Indian law by way of enforcing the mortgage in an action of this kind is to disregard the nature and amplitude of the saving provisions of the Pondicherry (Extension of Laws) Act, 1968, I have little hesitation in rejecting this contention of the appellant and in holding that even though the plaintiff might have had the alternative relief of enforcing the mortgage as if were a decree without resorting to an action in a Civil Court, undoubtedly she shared with the other Indian citizens the right to file a suit on the mortgage deed in a Civil Court, obtain a decree and then proceed to execute it."

19.The learned counsel for the revision petitioners/respondents drew the attention of this Court by placing reliance on the following passage at page 183 from the Book titled in THE FRENCH LEGAL SYSTEM AND ITS INDIAN CONNECTIONS By Justice Dr.DAVID ANNOUSSAMY, Visiting Professor, National Law School Formerly Chief Judge, Pondicherry Judge, High Court, Madras Vice-Chairman, Central Administrative Tribunal which runs as follows:

"Similarly, when the French civil law happened to be administered in English language the right of usufruct was translated as life estate or limited estate. But those concepts are different from the usufruct in respect of which the Code Civil otherwise reputed for its brevity contains 47 articles. As defined by the Code Civil in Article 578, it is the right of enjoying the use of things, which are owned by another, as fully as the owner himself, subject to the duty of keeping intact the subject-matter of such usufruct. The French have split the right of ownership into two separate rights, the right of bare ownership and the right of usufruct. Each can vest in two different persons who can deal with it and dispose of it as they please. The fragmentation of right in French Law: can last even after the first beneficiaries had ceased to hold their respective rights. In a life estate also there is also a fragmentation of right. But both do not have concomitant rights as in the case of usufruct. So the rights and obligations in the case of usufruct and life estate are quite different; assimilating the one to the other is conducive to errors."

20.The learned counsel for the revision petitioners/respondents submits that copies of notarial acts are of two kinds: (i) common copies, or expeditions, and (ii) executory copies, or grosses and a grosse is a copy bearing the formule executoire and the 'executory formula' which is the same in the case of a notarial act as in that of the decree of a court of law, is an order addressed to all huissiers and other agents of la

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force publique, directing them to give coercive effect, on request, to the covenants of the instrument, etc.

21.It is pertinent to refer that the Usufructory Gift Deed dated 25.04.1934 (Translation from Franch to English) executed by Ramakichenachettiar in favour of his mother Balasoubbammalle daughter of Venouchettiar and wife of the said Gobalacucheetiar and 2 of his sister Radhabayeammalle alias Leelailabaye daughter of the said late Gobalochettiyar and widow of mr.Zeganadam chettiar. In respect of the usufruct of the brick built partly tiled and partly tarraced house formerly bearing the No.79 and at present No.77 situated at the said Galisparincovil Street, Pondicherry with certain conditions. The said Usufructory Gift Deed dated 25.04.1934 has conditions:

'(i)The said ladies Balasoubbammalle and Radhabayeammal alias Conzilabaye shall jointly and together have during their respective life times, the enjoyment of the said house without having the right to sell, mortgage or gift it;

(ii)After the death of the said ladies Balasoubbammale and Radabayeammalle alias Couzilabaye the said house shall return to the donor, whereas the usufruct above mentioned shall come to an end by the death of the usufructories.'

22.It is to be noted that 'the individuals Balasoubbammalle and Radhabayeammalle alias Couzilabaye after reading and interpretation of all the preceding by the undersigned notaire (Mr.Ragounada Periasamy notare in the jurisdiction of Pondicherry) have formally declared by the present to accpet the usufructory gift of the said house made in their favour by their favour son and brother Ramakichena chettiar, by virtue of the present and undertake to conform to the conditions under which the present gift is made', as seen from the recitals of the said document.

23.The learned counsel for the respondents/petitioners submits that already a Decree was in favour of the respondents/petitioners and what remains to be done is that the execution of the Decree and it is not as if filing of fresh suit is the only remedy and that if second suit is to be filed then the respondents/petitioners would have no defense at all.

24.It is also further contended on behalf of the respondents/petitioners that the Execution Petition No.90 of 2002 filed before the learned Principal District Munsif, Pondicherry under Civil Procedure Code was only a procedural one and not obtained under French Law and the procedure to be adopted now is Civil Procedure Code and a decree passed long ago is enforceable in law and the same is valid and the position of the civil revision petitioners are that of permissive occupation.

25.According to the learned counsel for the respondents/petitioners, the Gift Deed dated 25.04.1934 was executed before the notary, which has the force of a decree and in support of the said contention placed reliance on the decision reported in AIR 1973 Calcutta 295 (Susama Bala

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Sur V. Bibhuti Bhusan Mondal) wherein it is observed as follows:

> "Index Note:-(A) Civil P. C., Section 2(2) - Decree - Grosses copy of a Notarial Mortgage Bond executed under the French Law has the force of a decree. (X-Ref:- Chandernagore (Merger) Act (1954), Section 18(2)). (X.Ref:- Chandernagore (Application of Laws) Order (1950), Paras 7 and 8). (X-Ref:- Chandernagore (Administration) Regulation (1952), Regln.8)."

26.In the aforesaid decision at page 296 and 297 in para 12 it is held as follows:

> "12.It has already been noted that a Notary under the French Law had to deliver a Grosses copy of a mortgage bond executed and filed before him in executory form by virtue of Article 545 of the French Civil Procedure Code. Such a grosses copy in executory form could be executed as a decree in accordance with the French Laws prevalent in Chandernagore and the holder of such a grosses copy could put the same into execution without having to file any suit for the enforcement of the mortgage. In the instant case the French Bond was executed on September 2, 1949, and was dated the same day. Upon such execution of the Notarial Mortgage Bond and delivery of a grosses copy thereof to the mortgagee the mortgagee acquired a right to execute the same without having to file a suit for the enforcement thereof. Upon the coming into force of the Chandernagore (Application of Laws) Order, 1950, such French Laws as corresponded with the statutes mentioned in the schedule to the said order stood repealed. Nonetheless the existing rights of parties on that date including the right of the respondent mortgagee to execute the said grosses copy of the Mortgage Bond without having to file a suit therefore were preserved by the saving clause contained in the para 7 of the said order. According to the provisions of the said order, neither the French Laws nor the French Code or Procedure in their entirety ceased to be operative but only so much of it ceased to be in force as corresponded to the statutes stated in the Schedule or subsequently added to the schedule."

27.At this juncture, it is relevant to make a mention that there is no vested right in procedure. As a matter of fact, in AIR 1973 Calcutta 295 (Susama Bala Sur V. Bibhuti Bhusan Mondal) at special page 297 it is categorically observed that 'a grosses copy of a Notarial Mortgage Deed could be executed as a decree has been held in the unreported case of Gour Mohan V. Gokul Chandra, F.M.A.No.50 of 1953 (Cal.), a decision of S.R.Das Gupta J. and Mullick J. of January 20, 1955.'

28.The pith and substance of the contention advanced by the learned counsel for the respondents/petitioners is that in the case on hand before us, the Usufructory Gift Deed dated 25.04.1934 was executed before the Notary and the same is in the manner of a decree passed by a competent Court of law, which has the force of a decree under the French Law and

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also under Indian Law and the mode of executing the same is only by means of Execution, is correct in law in the considered opinion of this Court and therefore, the contention of the civil revision petitioners/respondents that the Usufructory Gift Deed dated 25.04.1934 executed before the Notary was not a decree passed by a competent Court of law and therefore, it has no force of a decree under French Law and Indian Law is not accepted by this Court.

29.The learned counsel for the respondents/petitioners produced the English Translation of "CODE DE PROCEDURE CIVILE" (In French) before this Court and pressed into service Chapter VI of General Rules on forced execution of judgment and acts Art.545 which enjoins as follows:

> "No judgment or act shall be put into execution if they do not bear the same title as the laws and are not ended by an order to the law officers as provided for in Art.146."

and also placed reliance an Article 145 which runs as follows:

> "The certified copy of the judgment shall begin and terminate in the name of the King in conformity Art,48 of the Constitutional Charter."

30.In the English Translation by Notary of the French Arrete:- Article 1 of the English Translation speaks of that 'the provision of notariat which is organised in the french settlements in India according to the provisions of this decret.'

31.Article 2 (English Translation) specifies that 'the notaries are public officers appointed to record all deeds and contracts to which the parties should or wish to have given the authentic character attached to the deeds of public authority and in order to assure for them the date, to keep them in custody and to issue from them the engrossed and authentic copies.'

32.Article 20 in regard to the provision of notariat enjoins that 'all notarial deeds are conclusive evidence before court about the agreement they contain between the parties contracting and their heirs of beneficiaries and they are enforceable in the whole area of territory of Republic and in all the french possessions.'

33.Article 26 of the French Arrete English Translation refers to the engrossed copies only that are issued with execution formula, and they are titled and ended with the same terms as the courts judgments.'

34.Article 37 of the French Arrete (English Translation) refers to the number of notaries in Pondicherry commune as 1 and Article 39 states that 'there will be only one notary in each french settlement of Chandernagor, Mahe and Yanam.

35.In the Pondicherry Code Volume-I (published by the Law Department, Government of Pondicherry) The Schedule (See Section 1(3) para 1) page 350 refers the year 1952, No.53 as the Notaries Act, 1952.

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36.The Pondicherry (Administration) Act, 1962 (Act 49 of 1962) dated 05.12.1962, to provide for the administration of Pondicherry and for matters connected therewith, definition Section 2 (b) refers to '"appointed day" meaning the 16th day of August, 1962, being the date of entry into force of the Treaty of Cession.'

37.Section 4(1) of the Pondicherry (Administration) Act, 1962 relates to continuance of existing laws and their adaptation which states that 'all laws in force immediately before the appointed day in the former French Establishments or any part thereof shall continue to be in force in Pondicherry until amended or repealed by a competent or other competent authority:.....'

38.Further more, Section 4(2) of the Pondicherry (Administration) Act, 1962 speaks thus 'for the purpose of facilitating the application of any such law in relation to the administration of Pondicherry and for the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution, the Central Government may, within three years from the appointed day, by order, make such adaptations and modifications, whether by way of repeal or amendment, as may be necessary or expedient and thereupon every such law shall have effect subject to the adaptations and modifications so made.'

39.In the Pondicherry Code Volume-I (Published by the Law Department, Government of Pondicherry), the Pondicherry (Laws) Regulation, 1963 (No.7 of 1963) which speaks of extending certain laws to the Union territory of Pondicherry, Section 4 the Repeal and saving enjoins as follows:

> "Repeal and saving:-(1) Any law in force in Pondicherry or any area thereof corresponding to any Act referred to in section 3 shall stand repealed as from the coming into force of such Act in Pondicherry; and all the laws specified in the Second Schedule are hereby repealed.
>
> (2)Nothing in sub-section (1) shall affect-
>
> (a)the previous operation of any law so repealed or anything duly done or suffered thereunder; or
>
> (b)any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or....."

40.The Pondicherry Civil Courts Act, 1966 (No.12 of 1966), an Act to consolidate and amend the law relating to the Civil Courts in the Union territory of Pondicherry, Section 6 refers as follows:

> "Courts under the Act to be successors to existing Courts.-(1)The Tribunal Superieur d' Appeal, Courts of Tribuanl de lere Instance and Juge de Paix existing immediately before the commencement of this Act shall be respectively the first Court of the District Judge, Subordinate Judge's Court and Munsif's Court under this act."

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Moreover, Section 8(1) of the Pondicherry Civil Courts Act, 1966 states that

> (1)The jurisdiction of District Judge or Subordinate Judge extends, subject to the rules of procedure contained in the law relating to procedure for the time being in force, to all original suits and proceedings of a civil nature.
>
> (2)The jurisdiction of a Munsif extends to all like suits and proceedings not otherwise exempted from his cognizance, of which the amount or value of the subject matter does not exceed five thousand rupees:
>
> Provided that the Government may, by notification in the Official Gazette, increase the jurisdiction to ten thousand rupees.

41.It is useful to refer that the Treaty of Cession of the French Establishments of Pondicherry, Karaikal, Mahe and Yanam, Article 14 refers to

> "Legal proceedings instituted prior to the 1st of November 1954 shall be judged in conformity with the basic legislation and procedure in force at that time in the Establishments.
>
> To this end, and up to final settlement of such proceedings, the existing courts in the Establishments shall continue to function. Officers of the Court shall be law graduates, habitually domiciled in the Establishments, honourably known and selected in accordance with the French regulations governing the designation of temporary judicial officers.
>
> The interested parties shall be entitled, if they so decide by common agreement, to transfer to the competent Indian Courts, the said proceedings as well as proceedings which, though already open, are not yet entered with the Registrars, the French Courts and also proceedings which constitute an ordinary or extraordinary appeal.
>
> Judgments, decrees and orders passed by the French Courts, prior to the 1st of Novermber 1954, which are final or may become so by expiration of the delays of appeal, shall be executed by the competent Indian authorities. Judgments, decrees and orders passed after the 1st of November 1954 in conformity with the first paragraph of the present article shall be executed by the competent Indian authorities, irrespective of the Court which exercise the jurisdiction.
>
> Acts or deeds constitutive of rights established to the 1st of November 1954 in conformity with French law, shall retain the value and validity conferred at that time by the same law."

42.The learned counsel for the respondents/petitioners cited the decision reported in (2001) 1 M.L.J. 189 (S.C.) (Ratasingh v. Vijayasingh and others) wherein it is observed as follows:

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"Normally a decree or order becomes enforceable from its date. But cases are not unknown when the decree becomes enforceable on some further date on the happening of certain specified events. The expression "enforceable" has been used to cover such decrees or orders also which become enforceable subsequently."

43.The learned counsel for the revision petitioners/respondents put forward a plea before this Court that the respondents/petitioners will have the right to recovery and that will commence only after the death of Radhabai Ammal and not in the year 1968. He further submitted that after the death of Radhabai Ammal the right of enjoyment comes to an end. As a matter of fact, according to the learned counsel for the revision petitioner, the right of respondents/petitioners to recover possession only blossoms in the year 2002 when Radhabai Ammal died and not before that.

44.In AIR 1936 Madras 543 (Periakatha Nadar V. Mahalingam) it is held as follows:

"(a) Civil P.C. (1908), O.21, R.16-'Operation of Law.' meaning.

The words, "operation of law" cannot apply to a case where a person has become the owner of a decree by some transaction inter vivos.

(b)Civil P.C. (1908), O.21, R.16-No particular form of assignment is prescribed.

No particular form of assignment is prescribed in the case of decrees either under O.21, R.16 or by any other provision of law. Anything in writing which transfers a decree and clearly shows that the intention was to assign the decree is sufficient. What is required is an assignment in substance which is in writing."

45.In AIR 1959 Punjab 71 (Punjab Co-op. Bank V. Bikram Lal) it is held that

"Procedure is a handmaid and not mistress of law and rules of procedure should subserve and not govern. Procedure is only a channel to administer law and it should not be instrumental in impleading or obstructing justice; rules of procedure should always be utilised for advancing and not for defeating the cause of justice."

46.In AIR 1958 SC 394 (Saila Bala Dassi V. Nirmala Sundari) it is observed as follows:

"(b) Civil P.C. (1908), S. 146, O. 22, R.10 - Scope of S.146.

An appeal is a proceeding for the purpose of S.146 and further the expression "claiming under" is wide enough to include cases of devolution and assignment mentioned in O.22,

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R.10. Whoever is entitled to be but has not been brought on record under O.22, R.10 in a pending suit or proceeding the decree or order passed therein if his assignor could have filed such an appeal, there being no prohibition against it in the Code. AIR 1919 Mad 755 (2) Approved; (S) AIR 1955 SC 376 Foll.

Anno: AIR Com.C.P.C. S.146, N.2, 5, 8; O.22, R.10, N.2."

47.In AIR 1960 Calcutta 623 (Jatindra Mohan Banerjee V. Kali Charan @ Kalipada Sarkar) it is held thus

"Civil P.C. (1908), Ss.146, 47, O.21 R.32 – Representative suit – Decree for injunction – Execution against parties not on record – Can be ordered under S.146 – Applicability of S. 47(3).

A decree for injunction obtained against the defendants in a representative suit can be executed, under O.21 R.32, against those defendants who were not eo nomine parties to the suit. Though such defendants are neither the legal representatives nor the transferees within the meaning of O.21 Rr.16 and 22, yet as the execution proceeding is a proceeding within the meaning of S.146, it can proceed against such defendants as they claim the same title under or are equally interested as the defendants who were parties on record to the suit. And any finding by the execution Court on the objections raised by such defendants on merits will fall within the scope of S.47(3), (S)AIR 1955 SC 376 and AIR 1958 SC 394, Foll;(S)AIR 1955 All 385 and AIR 1942 Lah 136, Ref.; (S) AIR 1955 Mad 281 (FB), Not foll."

48.In AIR 1955 S.C. 376 (Jugalkishore V. Raw Cotton Company) it is observed as follows:

"(b) Civil P.C. (1908), O.21, R.16 – Equitable assignment.

The first thing that strikes one is the sequence of events contemplated by O.21, R.16. It postulates first, that a decree has been passed and secondly, that that decree has been transferred (i)by assignment in writing or (ii) by operation of law."

49.It is not out of place to make a significant mention that Ex.P.3, Usufructory Gift Deed dated 25.04.1934 provides for Balasoubbammalle and Radabayeammale to enjoy the property bearing present No.77 situated at Galisparincovil Street, Pondicherry during their respective life times without a right to sell mortgage or gift the same and after the death of two individuals referred to above, the said house shall return to the donor and that the usufruct shall come to an end by the death of the usufructories. There is no evidence to show when Balasoubbammalle expired. Radabayeammalle, the life interest holder expired on 29.07.2002, as evidenced by Ex.P.1-Death Certificate issued by the Pondicherry Municipality on 13.08.2002. Ex.R.3 is the Death Certificate of Ramakichenachettiar and his date of death is 24.09.1965, as seen from the Death Certificate issued by the Pondicherry Municipality dated 21.07.2003.

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Ex.R.2 is the Birth Certificate of first respondent Vengattaramin and his date of birth is 29.11.1964.

50.In the Executing Court, the first civil revision petitioner/first respondent has filed counter to the E.P.No.90 of 2002 filed respondents/petitioners. In the counter, it is specifically averred at para 4 that 'the civil revision petitioners/respondents are the Grand son and daughters of the original owner of the E.P. Schedule mentioned property and that they have also entered into a lease with one agreement holder, who had entered into an agreement with the actual owner of E.P. schedule mentioned property namely, grand mother of these respondents.' The respondents/petitioners father Ramakichenachettiar has executed the Usufructory Gift Deed dated 25.04.1934 wherein Balasoubbammalle and Radabayeammalle are given the right of enjoyment of the house during their life terms. It is pertinent to point out that Radabayeammalle is none other than the aunt of the respondents/petitioners.

51.The Executing Court in its order passed in E.P.No.90 of 2002 on 24.02.2004 has held that 'the respondents/petitioners filed Execution Petition as LRs of the donor and that Section 146 and Order 21 rule 16 provide for it and that there is no contra evidence, contra plea to show that respondents/petitioners are not the legal heirs of the donor and accepted the plea of the respondents/petitioners.'

52.When a specific plea has been raised in the counter to E.P.No.90 of 2002 filed by the first civil revision petitioner/first respondent and adopted by other civil revision petitioners/respondents that they are the Grand son and daughters of original owner of the E.P. Schedule mentioned property and when the respondents/petitioners claim that their father has executed the Usufructory Gift Deed dated 25.04.1934 then it is incumbent on the part of the Executing Court to give a definite and clear-cut finding as to the issue of legal representatives. In the present case on hand, the Executing Court in its order dated 24.02.2004 passed in E.P.No.90 of 2002 has not adverted to the plea of the civil revision petitioners/ respondents raised in para 4 of the counter that they are the Grand son and daughters of original owner and therefore, this Court is of the considered view that the issue of legal representatives is to be decided first by the Executing Court and later the Executing Court is to decide about the issue of executability of the Deemed Decree.

53.Section 2(11) of Civil Procedure Code defines "legal representative" which means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. It cannot be gainsaid that the Pondicherry Civil Courts Act, 1966 was amended by Act 5 of 2005 on 15.7.2005 which deals about the jurisdiction of District Judge, Subordinate Judge and District Munsif in Original Suits etc. Indeed Section 4 of the Pondicherry Civil Courts (amendment) Act, 2005 speaks of transitory provisions.

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54.Inasmuch as the issue of "legal representatives" is to be determined by the Executing Court viz., the Principal District Munsif, Pondicherry in E.P.No.90 of 2002 this Court remits the matter back to the Executing Court viz., Principal District Munsif, Pondicherry and the learned District Munsif, Pondicherry is directed to decide the issue of legal representative as defined under Civil Procedure Code in E.P.No.90 of 2002 and then the learned District Munsif, Pondicherry is also further directed to decide about the issue of executability of the Deemed Decree in the case on hand in the manner known to law and in that view of the matter, the Civil Revision Petition is allowed. The 3 days time granted by the learned District Munsif, Pondicherry to produce the grosse (original) is affirmed by this Court. The learned Principal District Munsif/Executing Court is further directed to dispose of the E.P.No.90 of 2002 on his file within four months from the date of receipt of copy of this order, providing opportunities to both parties to adduce oral and documentary evidence in accordance with law. Conseqeuntly, connected miscellaneous petition is closed. There shall be no order as to costs.

sgl

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Principal District Munsif,
   Pondicherry.

2. The Record Keeper,
   V.R.Section, High Court, Madras.

+1 cc to Mr.R.Subramanian, Advocate Sr.No.74438.

NG(CO)
DCP/3.1

C.R.P.(NPD).No.730 of 2004

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